SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 40

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON and HOWARD C. FARRINGTON,

Petitioners,

—vs—

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

BRIEF OF PETITIONERS

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BRIEF OF PETITIONERS

The opinion below of the Court of Appeals for the Fifth Circuit is reported at 210 Fed. (2d) 76. No opinion was written by the District Court.

JURISDICTION

Jurisdiction of this Court to review this case is based on 28 U. S. Code, Section 1254 (1). The opinion below was

filed January 15, 1954, and rehearing was denied February 5, 1954, (R. 36). A Petition for Writ of Certiorari was filed in this Court on April 16, 1954, and the Petition was granted on June 7, 1954.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment X.

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Section 33 of the Merchant Marine Act of 1920, 41 Stat. 988, c. 250; 46 U. S. Code, Sec. 688.

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right of remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principle office is located."

Section 733.16 (1), Florida Statutes; ch. 23970, Laws of Florida, 1947.

"(1) No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including but not limited to actions founded upon fraud or other wrongful act or commission of the decedent, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant, and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within the eight months from the time of the first publication of the notice to creditors shall be void even though the personal representaitve has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise; and no cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom such claim may be made, whether suit be pending at the time of death of such person or not, unless such claim be filed in the manner and within the said eight months as aforesaid;"

QUESTIONS PRESENTED

1. WHEN A FOREIGN-FLAG VESSEL IS LOST UPON THE HIGH SEAS AND BEYOND THE TERRITORIAL JURISDIC-

TION OF THE FORUM, IS NOT THE QUESTION OF THE SURVIVAL OF A TORT CLAIM AGAINST THE DECEASED VESSEL OWNERS, WHICH IS FOUNDED UPON SUCH LOSS, DETERMINED BY THE MARITIME LAW RATHER THAN BY THE LAW OF THE FORUM?

2. IF THE LAW OF THE FORUM AS TO SURVIVAL OF ACTIONS IS TO APPLY, MUST NOT THE PLAINTIFF (IN A JONES ACT CASE) COMPLY WITH ALL OF THE APPLICABLE LAWS OF THAT FORUM, INCLUDING SPECIFICALLY THE REQUIREMENT THAT NOTICE OF SUCH CLAIM MUST BE FILED IN ESTATE PROCEEDINGS WITHIN A SPECIFIED TIME?

3. DOES NOT THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION RESERVE TO THE STATES THE EXCLUSIVE POWER TO GOVERN THE ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF DECEDENTS, AND DOES NOT THE DECISION OF THE COURT OF APPEALS IN IGNORING THE NON-CLAIM SECTION OF THE FLORIDA PROBATE LAW DO VIOLENCE TO THAT AMENDMENT BY PERMITTING A FEDERAL LAW, THE JONES ACT, TO INTERFERE WITH THE ADMINISTRATION OF DECEDENTS' ESTATE?

STATEMENT OF THE CASE

In December, 1949, the M/V "WINGATE", of Honduran registry, sailed from Matanzas, Cuba. Several days later, the bodies of the Master and part owner, H. C. FARRINGTON, and of one other crew member were washed ashore on the Cuban coast. No word has ever been received from the vessel, and her wreckage, if any there be, has never

been found. At the time of her disappearance, the "WINGATE" was owned by H. C. FARRINGTON, SID COX, and another, all residents of Florida.

The Respondent Administrator brought this action in the District Court for Southern Florida in October, 1952, alleging that his intestate was a member of the crew of the "WINGATE". The suit was brought under the provisions of Sec. 33 of the Merchant Marine Act of 1920; 41 Stat. 988, c. 255; 46 U. S. Code, Sec. 688, commonly referred to as the Jones Act, to recover for the alleged death of such crew member. The Defendants are the administrators of the estate of SID COX, who died in 1950, and HOWARD C. FARRINGTON and HENRIETTA A. FARRINGTON, as distributees of the estate of H. C. FARRINGTON. The estate of Captain FARRINGTON was probated and the administratrix was discharged prior to the filing of this cause. No notice of claim was filed by the Plaintiff in either estate within eight months from the publication of the first Notices to Creditors, as is required by Sec. 733.16 (1), Fla. Stat.

The Petitioners filed Motions for a Summary Judgment. These Motions were granted by the District Judge without opinion. (R. 11). On an Appeal taken by the Respondent, the Court of Appeals reversed the District Court, holding that even though the Jones Act did not create a cause of action in the Respondent, since there is no provision in that act for the survival of actions against deceased tort-feasors, the Law of Florida did permit the survival of such actions. Upon the strength of this reasoning, the Court of Appeals then held that suits under the Jones Act against estates administered in Florida were not governed by the Florida non-

claim statute and that the District Court could entertain this action even though no claim had been filed against the estates within the time required under the Florida probate law. (R. 20). Hutcheson, Chief Judge, dissented, (R. 27).

SUMMARY OF ARGUMENT

POINT 1.

As the Jones Act does not provide for the survival of actions against deceased tort-feasors, we must look to the lex loci delicti commissi, not the lex fori, to determine whether the cause of action will survive. The alleged wrong having occurred upon the high seas, and not within the territorial jurisdiction of any state or country, resort must be had to the general maritime law. Under that law it has been established that tort actions do not survive the death of the wrong doer.

POINT 2.

Assuming, however, that the law of the forum (Florida) is applicable and that the Respondent's cause survives by virtue of that law, the Respondent must accept all of the pertinent law of Florida and not merely those parts which suit his convenience. Under the law of Florida, no claim survives unless a notice is timely filed in the estate proceedings, and no such notice was here filed. If the law of Florida is to be relied upon by the Respondent, the rights granted by that law must be taken **cum onere,** and the failure of the Respondent to comply with the notice of claim provision constitutes a bar to this suit.

POINT 3.

The eight-month notice of claim provision of the Florida probate law is an integral part of the procedure adopted in Florida for the administration and determination of decedents' estates. The administration and distribution of such estates is a function and power reserved solely to the States under the Tenth Amendment. It is not a power vested in the Federal Government. The decision of the Court below holding that the provisions of the Jones Act override the probate law constitutes an unconstitutional invasion of the States' power to administer estates. We are here dealing with not just a question of Federal law, but with two separate and independent spheres of the law—maritime and probate. While the Jones Act is supreme in the determination of the Respondent's rights, the Florida probate act is equally supreme in the determination of the manner in which those rights must be enforced once the vessel owners have passed on, and the Respondent must look to their estates for satisfaction. In the probate proceedings, the Respondent's claim is entitled to no privileges not shared by all other claims. Since there was no compliance with the provisions of the probate law, the Respondent's claim is barred.

ARGUMENT

QUESTION 1

WHEN A FOREIGN-FLAG VESSEL IS LOST UPON THE HIGH SEAS AND BEYOND THE TERRITORIAL JURISDICTION OF THE FORUM, IS NOT THE QUESTION OF THE SURVIVAL OF A TORT CLAIM

AGAINST THE DECEASED VESSEL OWNERS, WHICH IS FOUNDED UPON SUCH LOSS, DETERMINED BY THE MARITIME LAW RATHER THAN BY THE LAW OF THE FORUM?

This action was brought against the administrators of one deceased vessel owner and the distributees of another deceased owner of the same vessel. The complaint is based solely upon the provisions of the Jones Act. No other jurisdiction is alleged. The Court of Appeals clearly recognized that the Jones Act does not confer a right of action in favor of the Plaintiff and against the Defendants in this suit, since the Jones Act does not provide for the survival of actions against the personal representatives of a deceased tort-feasor. Specifically, the Court of Appeals said (R. 21):

> "Thus, there is nothing in the Jones Act which grants to seamen a right to bring an action against anyone except his employer and as the Act does not in terms provide for survival of actions against the estate of the deceased tort-feasor we are unwilling as in Nordquist v. United States Trust Co. of New York, 2 Cir., 188 F. 2d 776, to supply what the Congress omitted by reading a survival proviso into the statute where no legislative intent thereof is discoverable. If the law is to be changed it ought to be by an Act of Congress."

With that part of the opinion below, we concur.

But the Court then looked to see if the Plaintiff's cause of action could have survived the death of the vessel owners by virtue of any other applicable laws. The majority con-

cluded that since under the law of Florida an action survived the death of the tort-feasor, the Plaintiff could proceed in this cause. It is with this ruling that the Petitioners take issue. In reaching the conclusion that the law of Florida as to survival of actions was applicable, the Court below ignored the fact that the survival of actions against deceased tort-feasors is a matter of substantive law. It is, therefore, governed not by the law of the forum in which the Court may be sitting, but by the lex loci delicti commisi—the law of the place where the tort was committed.

Here, the alleged tort occurred upon the high seas and not within the territorial limits of the State of Florida. The facts in this case are, therefore, materially and substantially different from those presented in **Just v. Chambers,** 312 U. S. 383, 61 S. Ct. 687, 85 L. Ed. 903. There, the injuries occurred within the territorial waters of the State of Florida and this Court held that the Florida law as to survival should apply. But in our case, the alleged wrongful acts not having occurred within the territorial waters of Florida, the substantive law of Florida has no bearing whatsoever.

The action of the Court of Appeals in applying Florida law is in direct conflict with the decision of this Court in **Ormsby v. Chase,** 290 U. S. 387, 54 S. Ct. 687, 85 L. Ed. 903. There, an action was brought against an executor in Pennsylvania on a tort committed by the deceased in New York. While Pennsylvania recognized the survival of actions against deceased tort-feasors, New York did not. In denying the Plaintiff's right to maintain such an action, this Court said:

> "But the law of the place of the wrong determines whether the claim for damages survives the death of the wrongdoer."

and:

> "She (the plaintiff) could derive no substantive rights from the Pennsylvania survival statute."

This Court is not alone in reaching that conclusion. As the question of survival of actions has long been one on which the laws of the various states differed, the issue has been dscussed and decided in numerous opinions. The overwhelming weight of authority supports the position which this Court has previously taken. See **Annotations, 87 A. L. R. 852, 92 A. L. R. 1502, 17 A. L. R. (2d) 690.** See also **Restatement, Conflict of Laws, Sec. 390.** The recent decision of the California Supreme Court in **Grant v. McAuliffe,** 264 P. (2d) 944, holding the California law to be to the contrary, does not affect the weight of this authority.

The Court of Appeals was, therefore, in error in looking to the law of Florida, the forum, to determine the question of survival. That question should be determined by the law of the situs of the accident—the general maritime law.

What is the maritime law with respect to the survival of actions against deceased wrongdoers? This question is one which has arisen and been decided on several occasions. In each instance, the Courts have held that there is no survival of such actions under the general maritime law. While it is true that the issue has never been squarely determined in this Court, the law appears to be clear.

Whether we consider the general maritime law to be a development of the civil law, or whether we consider that common law principles govern, the law on the question of survival of actions will not differ. Under the common law, such an action did not survive. As was stated in **Henshaw v. Miller,** 17 How. 212, 15 L. Ed. 222:

> "The maxim of the common law is 'actio personalis mortiur cum persona,' and as this maxim is recognized both in England and in Virginia, the interpretation of it in the former country becomes pertinent to its exposition or application here. In England it has been expounded to exclude all torts when the action is in form ex delicto, for the recovery of damages, and the plea not guilty. That in case of injury to the person, whether by assault, battery, false imprisonment, slander or otherwise, **if either party who received or committed the injury die, no action can be supported either by or against the executors or other personal representatives."** (Emphasis ours)

Neither did an action survive the death of the tort feasor under the civil law. **Edwards v. Ricks,** 30 La. Ann. 926. Nor did any right of action exist for a wrongful death under either the common law or the civil law. With respect to the civil law, this fact is pointed out in **Hubgh v. The New Orleans & Carrollton R. R.,** 6 La. Ann. 495. Such was declared to be the common law by this Court in **Mobile Life Ins. Co. v. Brane,** 95 U. S. 756, 24 L. Ed. 580. And in the **Harrisburg,** 119 U. S. 199, 7 S. Ct. 140, 30 L Ed. 358, it was finally settled that neither was there such an action under the general maritime law, as administered by the Courts of the United States.

We therefore, find that with respect to its determination by this Court, the question of the maritime law as to the survival of actions against deceased tort-feasors rests in the same position as did the question of the maritime law with respect to actions for wrongful death, prior to this Court's opinion in the **Harrisburg.** In neither instance does a cause of action lie under either the common or the civil law. The reasoning of the Court in arriving at its decision in the **Harrisburg** necessarily lends itself to the present question. That reasoning is simple and concise. After pointing out that the laws of the various countries differ, Chief Justice Waite said:

> "But, however this may be, we know of no country that has adopted a different rule on this subject for the sea from that which it maintains on the land; and the maritime law, as accepted and received by maritime nations generally, leaves the matter untouched. It is not mentioned in the laws of Oleron, of Wisbuy, or of the Hanse Towns, (1 Pet. Adm. Dec. Appx.;) nor in the Marine Ordinance of Louis XIV., (2 Pet. Adm. Dec. Appx.;) and the understanding of the leading text writers in this country has been that no such action will lie in the absence of a statute giving a remedy at law for the wrong. Ben. Adm. (2d Ed.) S 309; 2 Pars. Shipp. & Adm. 350; Henry, Adm. Jur. 74. The argument everywhere in support of such suits in admiralty has been, not that the maritime law, as actually administered in common-law countries, is different from the common law in this particular, but the common law is not founded on good reason, and is contrary to 'natural equity and the general principles of law.' Since,

however, it is now established that in the courts of the United States no action at law can be maintained for such a wrong in the absence of a statute giving the right, and it has not been shown that the maritime law, as accepted and received by maritime nations generally, has established a different rule for the government of the courts of admiralty from those which govern courts of law in matters of this kind, we are forced to the conclusion that no such action will lie in the courts of the United States under the general maritime law. The rights of persons in this particular, under the maritime law of this country, are not different from those under the common law; and as it is the duty of courts to declare the law, not to make it, we cannot change this rule."

This reasoning was again expressed in **Western Fuel Co. v. Garcia,** 257 U. S. 233, 46 S. Ct. 89, 66 L. Ed. 210:

"It is established doctrine that no suit to recover damages for the death of a human being caused by negligence, may be maintained in the admiralty courts of the United States under the general maritime law. At the common law no civil action lies for the injury resulting from death. The maritime law as generally accepted by maritime nations leaves the matter untouched and in practice each of them has applied the same rule for the sea which it maintains on land."

When this principal is applied to the question at issue, we see that the law which the Courts of the United States

will accept as the general maritime law, in the absence of the establishment of a different rule by the maritime nations, is the common law, under which there is no survival of an action against a deceased tort-feasor. This result is bolstered by what has been referred to as the "unbroken, although slender, line of authority" by which the text writers and the lower Federal Courts have, without exception, held that under the general maritime law, such an action does not survive.

In **Crapo v. Allen,** Fed. Cases, No. 3360, it was contended that an administrator could maintain an action for injuries his intestate received upon the high seas. The Court held, however, that being maritime, the tort died with the person. This was true, even though under the law of the forum, Massachusetts, such actions did survive.

In re Statler, 31 F. (2d) 767, (Aff'd: 2 Cir., 36 F. (2d) 1021, cert, den. 281 U. S. 752), involved facts which in many respects are identical with those now under consideration. The "MIRAMAR", as did the "WINGATE", left port never to be heard from again. Suits based upon the Jones Act were filed against her owner by the representatives of the missing crew members. After trial of the cause, and before decision, the owner died. It was held that the action, being ex delicto, abated with the owner's death.

The Court of Appeals for the Fifth Circuit in the **Chambers v. Just,** 102 Fed. (2d) 105, considered at some length the question of survival of actions in admiralty. Citing the two above mentioned cases, it was held that under the Maritime Law there was no survival. While this Court reversed

that decision, it was on other grounds and this Court expressly refrained from deciding the issue now raised. **Just v. Chambers,** supra.

These decisions are in accord with the opinion of one of the early admiralty authorities in the United States. In **Dunlap's Admiralty Practice,** (published 1836), we find:

> "The death of a party does not in Admiralty necessarily abate the suit. Actions for injuries to the person do not survive to or against the representatives of either party; but actions respecting property survive, and the representatives may become or be required to become parties by a supplemental libel. (Hall's Ad. Practice, 21, 22.) But this does not apply to cases of personal wrongs, which die with the person, as at common law, the maxim of which, **actio personalis moritur cum persona,** is derived from the civil law. **Pennhallow v. Doane,** 3 Dallas 78, 102 (2 Roll. Rep. 18; 2 Lev. 6.)"

The reference to **Pennhallow v. Doane,** one of the early decisions of this Court, is of particular significance. It was there contended, in an in rem action, that the death of a claimant abated the cause. But it was held that such a position was unavailing since that action, unlike the one now at bar, was in rem. It is significant, however, to note that the successful argument advanced by the Respondent admitted that "Regularly, indeed, a suit abates by the death of a party."

It is, therefore, apparent that under the general maritime law, actions do not survive the death of the tort-feasor.

Since this be true, the Respondent here has no cause of action and his complaint should stand dismissed.

QUESTION 2.

IF THE LAW OF THE FORUM AS TO SURVIVAL OF ACTIONS IS TO APPLY, MUST NOT THE PLAINTIFF (IN A JONES ACT CASE) COMPLY WITH ALL OF THE APPLICABLE LAWS OF THAT FORUM, INCLUDING SPECIFICALLY THE REQUIREMENT THAT NOTICE OF SUCH CLAIM MUST BE FILED IN ESTATE PROCEEDINGS WITHIN A SPECIFIED TIME?

If the Florida law as to survival of actions against deceased tort-feasors does apply in a Jones Act case arising upon the high seas, must not the Plaintiff then comply with **all** of the applicable laws of Florida, including specifically the requirement that notice of such claim must be filed in the Probate proceedings within a specified time?

For the purpose of arguing this question, we must assume that the Florida law as to survival of actions is applicable and that the Respondent is thereby permitted to bring this action against the representatives of the deceased vessel owners. Thus finding himself in Court by virtue of and in reliance upon the Florida law, can the Plaintiff then pick and choose those parts of that law which suits his convenience, yet disregard those parts with which he has not complied, and which would disallow his claim? We think the answer is clear. As stated by Judge Hutcheson in the dissenting opinion below, if the action sued on is that afforded by the State, then it must be taken **cum onere.**

The controlling authorities certainly support this view. While the law of Florida does provide for the survival of tort actions, the statutes also declare, in unequivocal terms, that there shall be no survival of actions against deceased persons unless a claim is filed in the Probate proceedings within eight months from the first publication of the notice to creditors. Any claim not so filed is **void.** Specifically, the pertinent part of the statute provides:

> ". . . Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void . . . and no cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or ommission, shall survive the death of the person against whom such claim may be made, ..., unless such claim be filed in the manner and within the said eight months as aforesaid." Sec. 733.16 (1), Florida Statutes; Ch. 23970, Law of Florida, 1947.

In considering the effect of this language upon claims not so filed, the Supreme Court of Florida has said:

> ". . . it is apparent that it is a matter of public policy in this State that estates of decedents shall be **speedily** and **finally determined.** To effect this policy, statutes of nonclaim and of limitations have been set up. When these limitations have expired, any and all claims of **whatsoever nature** are **barred forever."** (emphasis by the Court). **Bedenbaugh v. Lawrence,** 141 Fla. 341, 193 So. 74.

Yet the Respondent contends that this part of the law of Florida does not apply to him. Admittedly, no claim was filed in either estate until many months after the time for such filing had expired. The Court below has found that the Respondent's suit is permissable because the law of Florida provides for the survival of actions. We say that if the law of Florida is to be considered, then **all** of the Florida law with respect to survival is applicable, and under that law it is expressly provided that no cause of action shall survive unless a claim is timely filed.

This Court had before it precisely the same principle in the **Harrisburg,** supra, a suit brought to recover for a wrongful death. One of the contentions there was that even though there might not be such an action under the maritime law, both the law of Pennsylvania, the home state of the vessel, and the law of Massachusetts, the place where the death occurred, allowed actions for wrongful death. But in both states it was necessary that such action be commenced within one year, and this requirement had not been met. In upholding the limitations, it was said:

> ". . . it would seem to be clear that, if the admiralty adopts the statute as a rule of right to be administered within its own jurisdiction, it must take the right subject to the limitations which have been made a part of its existence."

This holding was followed in **Western Fuel Co. v. Garcia,** 257 U. S. 233, 46 S. Ct. 89, 66 L. Ed. 210, a case involving a death claim arising under the California law, but which had been started after the time had expired. In **Lev-**

inson v. Deupree, 245 U. S. 648, 73 S. Ct. 914, 97 L. Ed. 1319, it was again cited with approval. The Fourth Circuit has also recently recognized its application. In **Continental Casualty Co. v. The Benny Skou,** 200 F. (2d) 246, they held:

> "Virginia has bestowed upon admiralty a right to grant recovery not previously possessed by admiralty. The endowment must be taken **cum onere.** As appellant grounds his action upon the Virginia Statute, he is obliged to accept that statute in its entirety as construed by the Virginia court of last resort."

It would seem to be beyond the realm of logic to say that while under the maritime law there could be no suit because there is no survival, and while under the Florida law there could be no suit because no claim was timely filed; yet by a union of the two, a hybrid claim can arise which transcends both of its sources and gives rise to an action which could not be maintained under either law standing alone. It is apparent that the Respondent must take the bitter with the sweet. Being in the first instance fortunate enough to be able to sue in a forum whose laws permit the survival of actions, he must of necessity suffer the consequences of his failure to bring such suit within the time required by the very laws upon which his action rests.

QUESTION 3.

DOES NOT THE TENTH ADMENDMENT TO THE UNITED STATES CONSTITUTION RESERVE TO THE STATES THE EXCLUSIVE POWER TO GOVERN THE

ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF DECEDENTS, AND DOES NOT THE DECISION OF THE COURT OF APPEALS IN IGNORING THE NON-CLAIM SECTION OF THE FLORIDA PROBATE LAW DO VIOLENCE TO THAT AMENDMENT BY PERMITTING A FEDERAL LAW, THE JONES ACT, TO INTERFERE WITH THE ADMINISTRATION OF DECEDENTS' ESTATES?

Apart from the considerations previously set forth, there is still another compelling and independent reason why the non-claim provision of the Florida Probate Law must be considered as a bar to this action.

In its opinion the Court of Appeals held that the only limitation that existed upon the right of the Respondent to sue was the three years allowed under the Jones Act. It refused to consider the Florida non-claim statute as applicable, treating it as merely another statute of limitations which was superceded by the paramount provision contained in the Jones Act. The principle authority cited, and quoted, was **Engle v. Davenport,** 271 U. S. 33, 46 S. Ct. 410, 70 L. Ed. 813. But that case holds, merely, that the three-year limitation is a part of the right which is created, and that where there are conflicting state statutes of limitations, those prescribed in the Jones Act will apply. This is admittedly true. We do not contend that the State non-claim statute is applicable merely because it sets forth a time limit which, in this particular instance, is shorter than that provided by the Jones Act. The reliance of the Court below upon this authority well illustrates that it failed to grasp the full significance of the issue involved.

The State non-claim provision is an integral part of the laws adopted by the State of Florida for the administration of the estates of its deceased residents. Such administration is a function and power reserved solely to the State and is not a power vested in the Federal Government. Therefore, insofar as it tends to conflict with the Florida probate act and the proper administration of estates under its provision, the Jones Act is not applicable. The opinion of the Court of Appeals in holding that such act is paramount to the probate laws of the State constitutes a violation of the Tenth Amendment which, in effect, reserves to the States the exclusive power to administer such estates.

There can be no doubt but that the non-claim provision ot the Florida Probate Law is an integral and essential component. This was well established by the language used by the Supreme Court of Florida in **Bedenbaugh v. Lawrence,** supra, holding it to be the public policy of our State that decedents' estates be "speedily and finally determined," and further pointing out, that the non-claim statute was set up "to effectuate this policy."

It has been equally well established that the administration of decedents' estates, and the matters pertaining thereto, are wholly matters of state cognizance. Certainly there is nothing in the Constitution which would indicate that the Federal Government was ever granted such power. Such authority must, therefore, of necessity, have remained with and been reserved to the State under the provisions of the Tenth Amendment.

This fact has been recognized by the Courts on several occasions. In **Harris v. Zion Savings Bank and Trust Company,** 127 Fed. (2d) 1012, The Tenth Circuit held:

> "Federal Courts have no probate jurisdiction. Power to administer estates resides entirely with the states."

In full accord is the decision of the Supreme Judicial Court of Massachusetts in **Petition of Worcester County National Bank,** 263 Mass. 217, 162 N. E. 217:

> "It seems to us not open to debate that the general subject of the settlement of estates of deceased persons and the appointment of fiduciaries to administer trusts is within the exclusive jurisdiction of the state. No clause of the Constitution of the United States confers any such power upon the Congress. Art. 1, Sec. 8. That power is not forbidden to the states, Art. 1, Sec. 10. It is made purely of state rather than national cognizance. It falls among the powers reserved to the states by Article 10 of the Amendments."

This Court has announced similar rulings on many occasions. In **Cope v. Cope,** 137 U. S. 682, 11 S. Ct. 222, 34 L. Ed. 832, a case involving the powers of the Utah Territorial Legislature, the Court, after finding that such powers were generally as plenary as those of a State Legislature, said:

> "The distribution of and the right of succession to estates of deceased persons are matters exclusively of

> state cognizance, and are such as were within the competence of the Territorial Legislature to deal with as it saw fit . . . ."

Again, in **Lyeth v. Hoey,** 305 U. S. 188, 59 S. Ct. 155, 83 L. Ed. 119, while holding that the question as to what constitutes taxable income was one of federal cognizance, this Court recognized that:

> "The local law determines the right to make a testamentary disposition of such property and the conditions essential to the validity of wills, and the state courts settle their construction. **Uterhart v. United States,** 240 U. S. 598, 603, 36 S. Ct. 417, 60 L. Ed. 819. The states establish the procedure governing the probate of wills and the power of administration."

See also, **Irving Trust Co. v. Dey,** 314 U. S. 556, 62 S. Ct. 398, 86 L. Ed. 452; and **Demorest v. City Bank Farmers Trust Co.,** 321 U. S. 36, 64 S. Ct. 384, 88 L. Ed. 526.

In **Harris v. Zion Savings Bank and Trust Company**, 317 U. S. 447, 63 S. Ct. 354, 87 L. Ed. 390, a case involving a conflict between the Bankruptcy Act and the Utah probate law, this Court held:

> "When we reflect that the settlement and distribution of decedents' estates and the right to succeed to the ownership of realty and personalty are peculiarly matters of state law; that the federal courts have no probate jurisdiction and have sedulously refrained even in diversity cases from interfering with the operations of state tribunals invested with that jurisdiction, we nat-

urally incline to a construction of Sec. 75, consistent with these principles. We think the beneficent purpose of the legislation will not be defeated by such a construction."

In the Harris case the Court expressly refrained from considering the issue of constitutional power. Instead, the question was approached on the grounds of whether Congress in enacting the Bankruptcy Act had intended to override the state probate law; the conclusion being, as noted above, that it was not the intention of Congress to do so, and that such a construction did not defeat the beneficent purpose of the act.

We do not believe that Congress ever intended by the enactment of the Jones Act to invade the province of the States in connection with the administration of estates, and the Court may again not feel constrained to consider the constitutional issue. It would certainly seem apparent that the general beneficent purposes encompassed by the Jones Act could not be defeated by a construction of that Act which held that it was not its intent or purpose to invade the area reserved to the states in the administration of estates.

In either case, the decision of the Court of Appeals is in error, since its effect is to say not only that Congress intended this Act to so apply, but that Congress also had the power to do so. The remarks addressed herein to the constitutional issue naturally apply as well to the question of Congressional intent and the purpose of the Act, since the former issue being of greater scope, necessarily includes the latter.

We have seen that in the Harris case a seeming conflict between the Bankruptcy Act and the probate law was resolved in favor of the probate law. Such was also the ruling in Massachusetts with respect to a similar conflict between the banking laws and the probate law. As the powers of the Federal Government to enact laws relating to bankruptcy, banking and maritime matters are derived from the same source, it is readily apparent that principles of conflict governing some of these fields must be applicable to all.

While the Court of Appeals looked upon this case as one involving an issue cognizable solely under the Federal statute; in reality, it presents independent issues arising under both the Federal and the State laws. Once it is realized that we are here concerned with two sovereign and independent spheres of the law, the maritime and the probate, the problem takes on its true perspective. That the Federal Government has full power to prescribe the nature and extent of the vessel owners' liability to the Respondent, including the time within which an action to enforce that liability could have been instituted against the vessel owners, is without question. However, upon the death of those owners, the administration of their estates became solely a matter to be governed by the probate law of Florida. While the Respondent still retains the rights granted to him by the Jones Act, if he desires to assert those rights against the Petitioners, he must proceed under the provisions of the probate law. He possesses no superior rights by virtue of his claim. It is of no greater, or lesser, dignity than any other claim based upon an existing and unexpired right.

Each law, federal and state, is superior within its own sphere. Each must, necessarily, respect the other and rec-

ognize such supremacy. The Jones Act can no more interfere in the manner here proposed with the administration provisions of the probate law, than could the probate law interfere with the Jones Act by, for example, prohibiting the filing in the administration proceedings of any claims arising upon the high seas

The Maritime Law, be it statutory or otherwise, occupies no higher plane than do similar laws of any other sovereign jurisdiction. If the principle announced in the opinion below is correct, there is nothing to prevent the Congress from requiring estates involving maritime claims, or even claims arising from any form of interstate or foreign commerce, to be actually administered in the Federal Courts. Such action would not involve any power not already assumed to rest with the Federal Government under that decision. It would involve solely the degree to which the Federal Government would exercise that power.

While the above illustration may appear exaggerated, such an action could not result in any greater disruption of the State's probate jurisdiction than has already occurred in this particular instance if the decision below is allowed to stand. The estate of Captain Farrington was completely and finally administered, the assets distributed, and the administratrix discharged long prior to the filing of this suit. If the Respondent is successful in this action, the decree of the probate court vesting the assets of his estate in his widow and minor child will be completely nullified. The effect will be to hold for naught the entire probate proceedings. Although the Courts have apparently taken judicial notice of the fact that "substantially all maritime risks are insured",

Keen v. Overseas Tankship Corp., 194 Fed. (2d) 2595, this is the exception which tends to prove the rule. A judgment in this case will be satisfied directly from the assets of the estates and in direct violation of the terms of the decrees of the probate court, and the statutes of the State of Florida.

The prior authorities and common logic both compel the conclusion that the claims against these estates must have been timely filed under the probate law of the State of Florida. The failure to do so constitutes a bar to this action.

CONCLUSION

The three questions heretofore presented are independent in the sense that a finding for the Petitioners on any one of these three issues requires a reversal of the opinion below. We respectfully submit that for any, or all, of the reasons herein argued, the decision of the Court of Appeals should be reversed, and the judgment of the District Court should be affirmed.

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